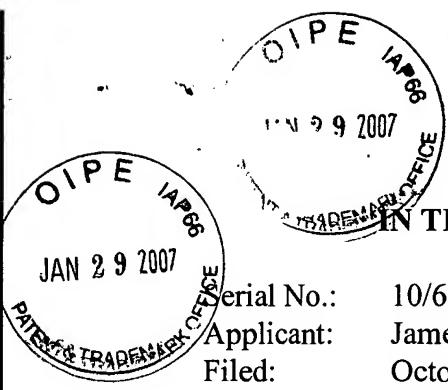


01-30-07

IFW



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/692,402
Applicant: James A. Vanek
Filed: October 23, 2003
Group #: 1723
Examiner: Tony Glen Soohoo

Confirmation Number: 8500

Docket No: Sport.201
Customer No: 23855
For: Collapsible Mixing Wand

MS Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

REPLY TO EXAMINER'S ANSWER

This Reply is filed in Response to the Examiner's Answer, dated November 30, 2006:

In response to the first Office action in this case, independent claim 1 was amended to recite that the mixer assembly includes a *flexible* polymer blade set having plural, integrally formed blades, and wherein each blade has a twist intermediate an attachment end which is attached to a blade set hub and a free end. This is disclosed in the Specification, page 6, line 11 to page 7, lines 4, and Fig. 9, and includes a description of "integrally formed" which encompasses integrally forming the blade set and integrally forming the blade set with the hub. Applicant clearly stated that the embodiment of the invention was that shown in Fig. 9 of the drawings, as the art applied in the first Office action very clearly described the embodiments of Applicant's invention which was shown in Figs. 1-8. It is not understood why, in light of Applicant's self-imposed restriction of his invention to the embodiment of Fig. 9, the Examiner continues to read the claims in light of all of the drawing

figures. Answer, page 3, last paragraph.

This Reply will discuss only the independent claims, as the reasons for allowance of the dependent claims are set forth in Applicant's Appeal Brief.

Initially, all independent claims require that the blades of the mixing wand be (1) integrally formed (with one another - as stated in Specification, page 6, line 12 through page 13, line 4); (2) that they be formed of a flexible polymer material; and (3) that the blades have a twist formed intermediate the ends thereof.

There are a number of errors in the Examiner's interpretation of the claim language and the applied art. In applying '389 to claims 1 and 8 (Ground A), the Examiner, in his Answer, states that '389 shows an integrally *connected* blade set. The claim language requires an integrally *formed* blade set. The claim also requires that the blade set be integrally formed with the hub, which is clearly not shown in '389. Integrally connected is not equivalent to integrally formed by any reasonable interpretation of the words. The Examiner also states that '389 teaches a flexible blade set. The problem here is that the Examiner ignores the plain meaning of flexible and the claim language. *Flexible* means able to bend without breaking; not stiff or rigid; pliant; easily bent. What is shown in '389 is a hinged blade set, formed of rigid metal. Again, stating that the blades of '389 are flexible simply ignores the teaching of the reference and the plain meaning of Applicant's claim language. None of the art applied by the Examiner teaches or suggests a flexible blade, as that term is commonly defined and is used by Applicant.

The Examiner states, in "Response to Argument" for Ground A, that the modifier "flexible" modifies the phrase blade set and not a blade element. There is no "blade element" recited in Applicant's claim, there are "integrally formed blades" which are a part of the flexible polymer

blade set. Again, the Examiner has twisted the meaning of the claims and the applied art to show a fiction, and has ignored the plain meaning of Applicant's claims, wherein "flexible polymer" modifies "blade set" and "integrally formed blades." The Examiner continues by stating that the blade set be flexible about a *pivot point* - which is clearly not meant by the claims.

The Examiner's discussion of case law is fairly good black letter law; the failing is in the "reasonable interpretation" of both the applied art and the claims. Applicant contends that the Examiner is not reasonably interpreting the claims consistent with the Specification. Specifically, the Examiner insists that the claims describe all of the drawing figures, and so interprets the claims. This is unreasonable in light of Applicant's statement in the Response to the first Office action that the claims were being limited to the embodiment of Fig. 9. Thus, claims 1 and 8 are clearly allowable over the applied art.

The rejection of claims 6, 11 and 13 under 35 U.S.C. § 103(a) as being unpatentable over '389 in view of '653 and '385 (Ground B) and the rejection of these claims under 35 U.S.C. § 103(a) as being unpatentable over '389 in view of '764 and '385 (Ground C) have the same failings as does the Ground A rejection: While '385 teaches use of a plastic blade, that plastic is rigid (col. 3, lines 26-60). '653 and '764 are similar to '389, in that the references teach a hinged, rigid metal blade attached to a separately formed hub.

The Examiner's further response to arguments have been carefully reviewed, and found to be a mere re-statement of the Examiner's position in the Final Office action from which this Appeal is taken.

Having shown that the applied art does not teach nor suggest the appellant's invention

as claimed, Appellants request that the Examiner's final rejection of these claims be reversed.

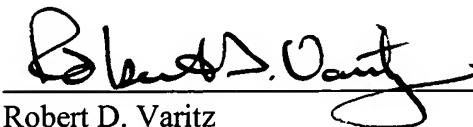
Customer Number

Respectfully Submitted,

23855

ROBERT D. VARITZ, P.C.

Registration No: 31436
Telephone: 503-720-1983
Facsimile: 503-233-7730

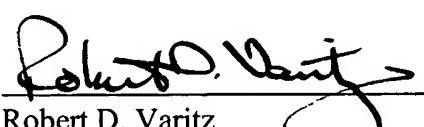

Robert D. Varitz
4915 S.E. 33d Place
Portland, Oregon 97202

CERTIFICATE OF EXPRESS MAILING

"Express Mail" Mailing Label No. **EV965115435US**
Date of Deposit - January 29, 2007

I hereby certify that the attached Reply to Examiner's Answer is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to:

MS Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450


Robert D. Varitz